

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LYNN EGAN and U.S. POSTAL SERVICE,
POST OFFICE, Chinchilla, PA

*Docket No. 00-807; Submitted on the Record;
Issued March 23, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an emotional condition in the performance of duty.

On February 2, 1998 appellant, then a 43-year-old window and distribution clerk, filed a claim for depression. Appellant stopped working on January 29, 1998.

In a March 17, 1998 statement, appellant stated that, on July 27, 1993, she "felt something was wrong" with her cash drawer. She reported the problem to her supervisor, Deborah Anastasi, who performed an audit of her drawer on July 29, 1993 and found a shortage of \$8,315.44. Postal inspectors subsequently informed her that Ms. Anastasi had reported the shortage. Appellant claimed that Ms. Anastasi lied in not informing the postal inspectors that she had initially reported the problem to Ms. Anastasi. Appellant was placed on administrative leave until November 30, 1993. She stated that her hours were cut and she was not allowed to work at her drawer. She filed a grievance to have her position and hours restored.

Appellant stated that, after this incident, Ms. Anastasi began to harass her and became confrontational and abusive. She related that Ms. Anastasi blamed the problems of the employing establishment on the prior management. She claimed that the supervisor would give her two to three assignments to do at one time and then ask her if the assignments had been completed when appellant worked at the window. She indicated that she was given a letter of warning on December 6, 1993 for poor work performance and notified of possible further disciplinary action. Appellant stated that she considered Ms. Anastasi as one of the suspects in the theft of her drawer and reported that she felt stressed that the letter of warning gave the possible thief the power to initiate disciplinary action against her.

On December 10, 1993 Ms. Anastasi gave her a letter of demand requiring appellant to repay the \$8,315.44 taken from her drawer. Appellant contended that on numerous occasions thereafter, Ms. Anastasi tried to set her up for firing by giving appellant fewer stamps or less

money than she requested for the drawer, so that she could conduct a surprise audit later and find appellant beyond the allowed limit for a shortage in her drawer.

Appellant stated that, on December 21, 1993, Ms. Anastasi ordered her to shovel the snow in front of the employing establishment. Appellant refused, citing back pain and stated that the duty was not in her job description. Appellant indicated that the next day, she was sent home as soon as she reported to work on the grounds that there was not enough work for appellant. Appellant contended that this action was in retaliation for her refusal to shovel the walk earlier.

Appellant indicated that in December 1996 she became aware that the letter of demand she had been given had not been removed from her personnel file. She related that in January 1997 Ms. Anastasi was in an automobile accident. She claimed that Ms. Anastasi continued to work at night and at different hours even though she was supposedly on sick leave. She suggested that Ms. Anastasi was committing insurance fraud. Appellant indicated that she was not placed in charge of the employing establishment while her supervisor was on sick leave and another worker was brought in and eventually became the officer in charge of the employing establishment. She noted that the new worker was given a 40-hour work week, which deprived appellant of work hours. She commented that, on May 30, 1997, she had to come into work because the new worker was having difficulty due to back pain and shortness of breath.

Appellant stated that Ms. Anastasi badgered her to submit medical reports with a diagnosis of her condition. She indicated that, on May 13, 1997, she came in from a medical examination with a note that was rejected by her supervisor. She reported that other officials informed her that a report that she was absent for medical tests would be sufficient. She stated that her supervisor still rejected two requests for sick leave that were submitted.

Appellant related that, on June 27, 1997, Ms. Anastasi ordered her to go to an Employees' Assistance Program (EAP) but when she appeared for the first meeting, no one met her. When she appeared for the second meeting, an official suggested that the employing establishment not pursue the matter. Appellant stated that on July 3, 1997 she was given a letter of warning for failure to provide acceptable medical documentation.

Appellant indicated that, on October 25, 1997, a customer bought four sheets of stamps. She reported that, when she closed the employing establishment that day, she found the four sheets of stamps on the floor of the employing establishment's lobby. She stated that she placed the stamps in an envelope, put the customer's name on the envelope and put it in her drawer. She indicated that she was then subjected to an audit in which the stamps turned up. Appellant contended that the customer was probably a postal inspector sent to the employing establishment to set her up. She claimed that the amount of stamps purchased placed her out of tolerance limits. She subsequently received a seven-day suspension for failure to follow proper procedures in turning in lost stamps.

Appellant indicated that on January 20, 1998 she was disciplined for accepting a check that was later refused for insufficient funds. She received a 14-day suspension for failure to follow proper procedures in accepting a check.

The employing establishment submitted a March 31, 1998 prearbitration agreement. In the agreement, the July 3, 1997 letter of warning was reduced to a discussion, the November 7, 1997 seven-day suspension was reduced to a letter of warning and the 14-day suspension was reduced to a seven-day suspension.

In a June 4, 1998 statement, Ms. Anastasi denied that she ever harassed appellant. She submitted copies of numerous cards and notes sent to her by appellant in which appellant expressed friendship and her appreciation for the supervisor. She commented that appellant told of stress in her personal life, including her relationship with her husband and credit card debt. She indicated that appellant was due for an audit in July 1993. When the audit was conducted, appellant was found to have a shortage of \$8,315.44 in an accountability of \$9,965.00. Ms. Anastasi reported that computer error was ruled out as a cause of the shortage. She noted that there were only two keys to appellant's drawer, one in appellant's possession and one placed in a sealed envelope in the employing establishment's safe. She stated that the envelope was inspected and found to be intact with no evidence of tampering.

Appellant was placed on administrative leave while the shortage was investigated and was given a letter of warning due to the incident. Ms. Anastasi related that appellant gave five versions of the cause of the shortage, including the version that she had stolen the stock from appellant's drawer. Ms. Anastasi denied appellant's allegation as without merit.

Ms. Anastasi indicated that appellant was a part-time flexible clerk and therefore was guaranteed only two hours of work upon clocking in. She noted that appellant passed on an opportunity to transfer to another employing establishment that would give her 40 hours a week.

Ms. Anastasi also noted that she and appellant shared the snow shoveling duties. She commented that appellant became uncooperative after she received the letter of warning and as an example of this behavior, refused to shovel the snow on December 21, 1993. She stated that appellant submitted a doctor's notes three days later that restricted her from performing heavy lifting.

Ms. Anastasi indicated that she was involved in an automobile accident on January 7, 1997. She was on restrictions for the next six months and did not perform tasks outside the restrictions. Ms. Anastasi stated that she continued to run the employing establishment administratively on an as needed basis. She indicated that the hours paid to her were for her earned sick leave. Ms. Anastasi noted that a postmaster from another employing establishment was brought in to supervise while she was on sick leave.

Ms. Anastasi stated that on May 13, 1997 appellant informed her that she had a doctor's appointment that day. When Ms. Anastasi came to work, she reminded appellant to bring back proper documentation. She denied that she asked for a diagnosis. Ms. Anastasi stated that, when appellant returned with the documentation, she pointed out that the medical slip from the doctor had an incorrect date, was a photocopy and not the original slip, and did not meet the minimum requirements for medical documentation. She indicated that subsequent excuses also failed to meet the employing establishment requirements. She therefore issued a letter of warning finding that appellant was absent without leave and failed to provide acceptable medical documentation.

She stated that appellant was referred to the EAP for mood swings, incongruent allegations and visible tremors.

Ms. Anastasi indicated that, on October 30, 1997, a stamp audit revealed four sheets of stamps which appellant attempted to conceal in her drawer by placing the stamps among a disorganized pile of financial reports. She stated that appellant gave two stories on why she had the stamps in her drawer. She reported that appellant was suspended for cause because she had shown in the past that she was familiar with the procedure for handling found stamps. She noted that on December 19, 1997 appellant accepted a check without proper identification which later was returned as unpaid. Ms. Anastasi indicated that appellant received a 14-day suspension for the failure to required proper identification.

In a June 30, 1998 decision, the Office denied appellant's claim on the grounds that the evidence of record failed to show that her injury occurred in the performance of duty. Appellant requested a hearing before an Office hearing representative which was subsequently modified to a request for a review of the written record. In a September 30, 1999 decision, an Office hearing representative found that the evidence of record did not establish any compensable factors of employment.

The Board finds that appellant has not established that she sustained an emotional condition within the performance of duty.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.

Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.¹ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.² In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.³

Appellant attributed the beginning of her stress to the July 27, 1993 audit which found her to be \$8,315.44 short in her account. She contended that her supervisor was the probable thief and lied about appellant's role in reporting the problem. There is no evidence, however, that the supervisor was responsible for the shortage in appellant's drawer, particularly as there is no evidence that she had access to appellant's drawer.

Appellant was subjected to an investigation because of the shortage and was placed on administrative leave for several months during the course of the investigation. Investigations are an administrative function of the employing establishment that does not involve a claimant's regular or specially assigned duties. Investigations, therefore, are not considered to be compensable factors of employment. The employing establishment has a right to conduct investigations if wrongdoing is suspected, and, as appellant provided no evidence that the employing establishment acted abusively or unreasonably, she failed to establish a compensable work factor.⁴

Appellant contended that her supervisor subjected her to continual harassment over the course of several years and that her emotional condition was in part caused by this harassment. The actions of a supervisor, which an employee characterizes as harassment, may constitute factors of employment giving rise to coverage under the Act. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.⁵

In this case, appellant did not establish, with statements from sources other than her own allegations, that Ms. Anastasi subjected her to harassment. She also did not establish that Ms. Anastasi engaged in a pattern of behavior in deliberately giving appellant fewer stamps than she requested in attempts to trap her later with an audit.

Appellant contended that she was improperly denied hours when a substitute was brought in for Ms. Anastasi while she was recovering from her automobile accident. Appellant also claimed that she was not placed in charge of the employing establishment during this period. Hours of work and the selection of supervisory personnel are within the administrative discretion of the employing establishment. There is no evidence that the employing establishment's actions in reducing appellant's hours or placing someone else in charge were erroneous or abusive.

Appellant cited the disciplinary actions she received as factors of her employment which demonstrated a pattern of harassment and an effort to have her fired. These included the letter of warning for failure to submit proper medical documentation for absences in May 1997, the

³ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁴ *Bernard Snowden*, 49 ECAB 144 (1997); *Garry M. Carlo*, 47 ECAB 299 (1996).

⁵ *Joan Juanita Greene*, 41 ECAB 760 (1990).

failure to properly return found stamps, and the failure to request proper identification in accepting a check. Disciplinary matters concerning letters or warning or suspensions pertain to actions taken in an administrative capacity. Although administrative and personnel matters are generally related to the employment, they are functions of the employing establishment and not part of a claimant's assigned duties.⁶ The disciplinary actions taken in appellant's case were for infractions of the rules and procedures of the employing establishment. There is no evidence that these actions were erroneous or were part of a pattern to abuse appellant. These actions therefore cannot be considered compensable factors of employment.

Appellant has failed to establish that any of the factors she cited as the cause of her depression are compensable factors of her employment. She therefore has not established that she was injured in the performance of duty.

The decision of the Office of Workers' Compensation Programs dated September 30, 1999 is hereby affirmed.

Dated, Washington, DC
March 23, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

⁶ *Gregory N. Waite*, 46 ECAB 662 (1995).